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SUBJECT: 2005 NATIONAL TRADE ESTIMATE REPORT FOR SOUTH AFRICA

REF: STATE 240980

1. This cable responds to reftel request for updating and revising last year's NTE chapter on South Africa. Post is also sending the text by e-mail to EB/MTA/MST and to USTR contacts. Post understands Washington will update the figures contained in the first paragraph in the trade summary.

2. BEGIN TEXT

SOUTH AFRICA

TRADE SUMMARY

The U.S. trade deficit with South Africa was \$1.8 billion in 2003, an increase of \$308 million from 2002. U.S. goods exports in 2003 were \$2.8 billion, up 11.7 percent from the previous year. Corresponding U.S. imports from South Africa were \$4.6 billion, up 15.0 percent. South Africa is currently the 34th largest export market for U.S. goods. U.S. exports of private commercial services (i.e., excluding military and government) to South Africa were \$1.1 billion in 2002 (latest data available), and U.S. imports were \$782 million. The stock of U.S. foreign direct investment (FDI) in South Africa in 2002 was \$3.4 billion, up from \$3.1 billion in 2001. U.S. FDI in South Africa is concentrated largely in manufacturing, services, and wholesale sectors.

South Africa has increasingly opened its market since 1994 by reducing tariff rates and non-tariff barriers. The South African government has stated its aim to open the market further in order to increase trade and to develop more competitive domestic industries. As a member of the Southern African Customs Union (SACU), South Africa began negotiations for a free trade agreement (FTA) with the United States in June 2003. The FTA negotiations provide an unprecedented opportunity for addressing trade constraints on U.S. exports to South Africa, including relatively high tariffs and import restrictions on certain U.S. exports; inadequate copyright protection for software, films, and music; and barriers in telecommunications and other key service sectors. South Africa aims to conclude free trade agreements in 2005 with Mercosur and the European Free Trade Association (EFTA) and to begin negotiations with India. It continues to explore a possible free trade agreement with China. Along with India and Brazil, South Africa was a founding member of the G-20 coalition of countries formed prior to the September 2003 WTO Ministerial in Cancun.

IMPORT POLICIES

The South African International Trade Administration Commission (ITAC) came into operation in June 2003. ITAC, which replaced the Board on Tariffs and Trade, was established under Section 7 of the International Trade Administration Act of 2002. It has been tasked to establish an efficient and effective system for the administration of trade. ITAC's responsibilities include:

**TARIFF INVESTIGATIONS** - The ITAC administers tariff-related programs, including the Motor Industry Development Program (MIDP) and the Duty Credit Certificate System (DCCS). Interested parties are entitled to approach ITAC with specific requests for tariff assistance.

**TRADE REMEDIES** - The ITAC deals with antidumping and subsidized exports as well as safeguards. The safeguards procedures were introduced in August 27, 2004, but have not yet been applied.

**IMPORT AND EXPORT CONTROL** - The ITAC issues import and export permits for certain items designated by the Minister under the authority of the International Trade Administration Act of 2002, which repealed the Import and Export Control Act of 1963.

Import Control

The Minister of Trade and Industry may, by notice in the

Government Gazette, prescribe that no goods of a specified class or kind be imported into South Africa, except under the authority of, and in accordance with, the conditions ns stated in a permit issued by ITAC. The main categories of controlled imports and the objectives of control are as follows:

-- Secondhand goods: Import permits are granted only if such goods or substitutes are not manufactured domestically, constituting a de facto ban on such goods. These restrictions are designed to protect domestic industries such as clothing, motors, machinery and plastics, but also serve to discriminate against low-cost secondhand goods from the United States.

Waste, scrap, ashes, and residues (Basel Convention): The objective of import controls of these goods is to protect human health and the environment.

Other harmful substances: Imports of substances such as ozone depleting chemicals (Montreal Convention) and chemicals used in illegal drug manufacturing (1988 United Nations Convention) are controlled for environmental, health and social reasons.

Goods subject to quality specifications, such as tires: This restriction permits monitoring of manufacturer adherence to specifications that enhance vehicle safety or protect human life.

#### Tariffs

To comply with its WTO commitments, since 1994 South Africa has reformed and simplified its tariff structure. It has reduced tariff rates from an import-weighted average tariff rate of more than 20 percent to 7 percent. Notwithstanding these reforms, importers have complained that South Africa's tariff schedule remains complex and can create uncertainty. The U.S.-SACU free trade agreement negotiations provide an opportunity to work with the South African government to lower these relatively high tariff rates. Tariff rates mostly fall within eight levels ranging from 0 percent to 30 percent, but some are higher, such as for specific textile and apparel items. In the Uruguay Round, South Africa agreed to a twelve-year phase-down of duties on textiles and apparel, but since then has unilaterally moved to a seven-year phase-down process. As of September 1, 2002, the following rates, which are also the end rates, apply:

Apparel	40 percent
Yarns	15 percent
Fabrics	22 percent
Finished goods	30 percent
Fibers	7.5 percent

Duty rates on cars, light goods, vehicles and minibuses are still at the high level of 36 percent, while the rate of duty on original motor parts is 28 percent. Under the terms of the Motor Industry Development Plan (MIDP), international companies that both import and export motor vehicles and parts are able to use export credits to reduce the import duties.

ITAC continued to receive requests for tariff protection from industries, especially since the South African rand's appreciation curve started in late 2002. The appreciation of the rand resulted in increased competition from imports that hurt the competitiveness of many South African companies. U.S. companies have cited tariffs as a barrier to trade in South Africa, along with port delays and congestion, customs valuation above invoice prices, theft of goods, import permits, antidumping measures, IPR crime, an inefficient bureaucracy and excessive regulation.

#### Dumping

Twelve new antidumping petitions were filed in South Africa during 2003-2004, the majority against Chinese products. While no new antidumping investigations against imports from the United States were instituted in 2004, antidumping duties on U.S. chicken meat portions, suspension PVC, roller bearings, lysine and acetaminophenol remain in force. In early 2004, ITAC also increased the MFN applied duty on imports of poultry offal, as requested by the domestic industry. In an important step to increase transparency and clarity on the dumping investigation processes, anti-dumping regulations were promulgated on November 14, 2003.

#### Free Trade Agreement with the European Union

In 2000, South Africa and the European Union (EU) began to implement the development co-operation and financial co-

operation provisions of their Agreement on Trade, Development and Cooperation, a free trade agreement (FTA). Under the agreement, South Africa and the EU will establish a free trade area over a transitional period of up to twelve years for South Africa, and up to ten years for the EU. The FTA provides for the reduction and eventual elimination of duties for approximately 85 percent of the products imported by SA from the EU and 95 percent of the products exported by South Africa to the EU. Certain agricultural products were exempted from liberalization under the agreement. South African and EU negotiators announced at the end of 2003 that they would seek to accelerate the process of negotiation towards freer trade in automobiles. U.S. firms exporting to South Africa are concerned that their products will be less competitive because of the preferences given to the EU. For example, there is a five percent differential between the duties on EU and U.S. trucks. U.S. companies are divided on whether they have been disadvantaged by the EU FTA.

#### STANDARDS, TESTING, LABELING AND CERTIFICATION

##### Biotechnology

There has been an active debate in South Africa about products produced using agricultural biotechnology. The Genetically Modified Organisms Act ("the GMO Act"), which entered into force on December 1, 1999, aims to ensure that all activities involving the use of agricultural biotechnology (including production, import, release and distribution) will be carried out in such a way as to limit possible harmful consequences to the environment. Since 1999, some stores have promoted claims of selling a limited range of biotechnology-free products, while a few consumer groups have urged the Department of Health to introduce compulsory labeling of biotechnology products.

Under the leadership of the Department of Health, Directorate of Food Control, the South African government issued regulations on the labeling of biotechnology products in early 2004. The regulations mandate labeling of genetically modified (GM) foods only in certain cases, including when allergens or human/animal proteins are present, and when a GM food product differs significantly from a non-GM equivalent. The rules also require validation of enhanced-characteristic claims for GM food products. The regulations do not address labeling claims that products are GM-free. Biotech advocates are concerned about this omission, noting it could lead to many fraudulent claims. Trade organizations seem satisfied with the regulations, which follow internationally recognized, scientific (CODEX) guidelines. South Africa's CODEX representative comes from the Directorate of Food Control.

In November 2004 the government published draft changes to the GMO Act to bring it into compliance with the Cartagena Biosafety Protocol. The government solicited public comments on the draft changes through November 2004 and is currently evaluating those comments.

In June 2001, the South African government published the National Biotechnology Strategy for South Africa, a document that shows the South African government's intent to stimulate the growth of biotechnology industries. The document states that biotechnology can make an important contribution to national priorities, particularly in the areas of human health, food security and environmental sustainability. Environmental groups continued to exert pressure on the South African government in 2004 to examine the safety of foods derived from agricultural biotechnology.

South Africa has approved for commercial production [begun to grow] genetically modified soybeans that are tolerant to herbicides, and cotton and yellow and white maize that are resistant to insects. Farmers are enthusiastically adopting the new technology, and they are expected to plant up to 1 million hectares of genetically engineered varieties in South Africa in 2004, up from about 400,000 hectares in 2003. The use of these products is widespread in the food processing industry.

U.S. grain producers have raised concerns about South Africa's treatment of genetically modified "stacked events." Although the U.S. Government considers products containing a combination of two previously approved genetic modifications (such as for insect resistance and herbicide tolerance) as "conventional" and encourages producers to notify the USG of such stacked events, South Africa -- like the EU -- considers the combined "stacked events" as a new event, and requires a complete, de novo review for registration purposes. This requirement creates significant delays in registering products, causing U.S. exporters to lose export opportunities. At present, U.S. yellow corn is not approved for import by the government of South Africa.

due to delays in registering stacked events and other new events. As a result, if yellow corn were in short supply in South Africa in 2005, importers would have to apply to the government for a special waiver in order to import U.S. yellow corn, with the guarantee that the U.S. yellow corn would be milled near the port to ensure that it cannot be planted.

In 2003 and 2004, Biowatch, an environmental lobby group, took legal action against the National Department of Agriculture in order to obtain information on how it made decisions on issuing licenses for modified crops. The local courts ruled in favor of NDA, which protects certain information on a business proprietary basis.

In September 2003, countries of the Southern African Development Community (SADC), including South Africa, developed common guidelines on the regulation of products resulting from biotechnology. The guidelines assert that the region should develop common policy and regulatory systems that are based on either the Cartagena Protocol or the African Model Law on Biosafety. The heads of SADC member states also agreed to develop national biotechnology policies and strategies and to increase their efforts to establish national biosafety regulatory systems. Member states were also urged to commission studies on the implications of biotechnology for agriculture, the environment, public health and socio-economics.

#### Agricultural Standards

The Directorate of Plant Health and Quality of the National Department of Agriculture is responsible for setting standards for certain agricultural and agricultural-related products. These standards include composition, quality, packaging, marketing, and labeling, as well as physical, physiological, chemical, and microbiological analyses. These standards, published in the Agricultural Product Standards Amendment Act of 1998 and the Liquor Products Act of 1989, set the regulations for products to be sold on both the local and export markets. U.S. distilled spirits producers have complained that South African regulations that require a minimum alcohol content by volume (a.b.v.) for whisky, rum, and other products limit the marketing of U.S.-origin spirits that meet the international standard of 40 percent a.b.v.

The South African government requires prospective importers to apply for an import permit for certain controlled products. The import of irradiated meat from any source is still banned by public health officials. U.S. horticultural producers have complained about various South African phytosanitary barriers on the importation of apples, cherries, and pears from the United States. They estimate that, if these barriers were removed, U.S. exports of each of these fruits could increase by \$5 million to \$25 million in annual sales to South Africa. U.S. producers have also expressed concern about unnecessary SPS requirements for some grains, pork, poultry, and horticultural products.

In order to fulfill South Africa's commitment under the WTO Marrakesh Agreement on market access, the National Department of Agriculture published the rules and procedures regarding the application for market access permits for agricultural products on October 24, 2003. The permits will be issued to importers registered with the South African Revenue Service (SARS) and the Department of Trade and Industry (DTI) for importation of the agricultural products listed in the Table of Import Arrangements. Permits will be allocated as follows:

? 10 percent to importers who have not imported over the past 3 years ("new importers"),

? 10 percent to Small, Medium, and Micro Enterprise importers ("SMME Importers"),

? 80 percent to importers who have imported the products over the past 3 years ("historical importers").

In response to the BSE case in Washington State announced on December 23, 2003, South Africa placed a ban on all ruminant animals and products originating in the United States effective December 24, 2003. By January 15, 2004 South Africa, in accordance with OIE standards, exempted non-risk products such as hides, skins, wool and mohair from the ban. At this time a ban is still in place on ruminant meat products. The South African Department of Agriculture is impressed with USDA's surveillance program but wants to see a full report with data from the surveillance program before considering lifting the ban.

During 2004 South African grain, pork and poultry producers petitioned the government to raise tariffs with little success except for poultry offal. The Government of South

Africa does not have an effective safety net to support farmers financially during times of drought or strong currency. Therefore, farmers' groups will likely continue to pressure the government to try to reduce imports or make them more expensive.

#### GOVERNMENT PROCUREMENT

Government purchases are by competitive tender for project, supply, and other contracts. The South African government uses its position as both buyer and lawmaker, however, to promote the economic empowerment of historically disadvantaged individuals (HDIs) through its Black Economic Empowerment (BEE) policy. In January 2004, President Mbeki signed into law the Broad-Based Black Economic Empowerment (BBBEE) Act of 2003, the legislation enacting the BEE strategy. The Act directs the Minister of Trade and Industry to develop a national strategy for BEE, issue BEE implementing guidelines in the form of Codes of Good Practice, encourage the development of industry specific charters, and establish a National BEE Advisory Council to review progress in achieving BEE objectives.

The Minister released three Codes in December 2004 with seven more due in early 2005. The recently released Codes address specific issues pertaining to the BEE Framework, Equity Ownership, and Management and include a new generic scorecard with suggested targets for areas such as equity ownership, management, procurement, and equality in employment. The Codes are intended to harmonize existing and future industry empowerment charters. Sectors that have completed or are close to finalizing empowerment charters for their respective industries include: accounting, agriculture, chemical, cosmetics, clothing and footwear, construction, engineering services, financial services, forestry, health, information and communications technology (ICT), liquid fuels, liquor, marketing, mining, property, tourism, transport, and wine. The Minister is expected to establish the National BEE Advisory Council early in 2005.

While many U.S. companies operating in South Africa have significant programs that support HDIs, they have concerns about the lack of clarity and consistency in the BEE rules. A major concern is whether HDI equity ownership will become mandatory and a cost of doing business with the South African government. The Minister of Trade and Industry is developing a statement on equity ownership for multinationals to be included in the Code of Good Practice on Equity Ownership, which is expected to address the concerns of U.S. companies.

South Africa's Preferential Procurement Policy Framework Act of 2000 and its implementing regulations set a legal framework and formula for evaluating bidders of government contracts by price and the advancement of socio-economic priorities. Revised draft regulations were released in November 2004 to take into consideration the BBBEE Act. The new regulations give greater preference to bidders of government contracts who more effectively comply with BEE objectives. In addition, the draft regulations raise tender thresholds. Previously, companies bidding on tenders worth up to R500, 000 earned 80 percent of their points from their bid price and 20 percent on their commitment to social objectives (80-20 preference point system). Now, the 80-20 point system is applied to tenders valued up to R1 million and firms are evaluated on their compliance with their respective industry BEE scorecards. Similarly, a 90-10-preference point system is applied to tenders valued at over R1 million. The National Treasury is expected to approve and gazette the new Preferential Procurement regulations by mid-2005.

South Africa's Industrial Participation (IP) program, introduced in 1996, subjects all government and parastatal purchases or lease contracts (goods, equipment or services) with an imported content equal to or exceeding \$10 million (or the rand equivalent thereof) to an IP obligation. This obligation requires the seller/supplier to engage in commercial or industrial activity equaling or exceeding 30 percent of the imported content of total goods purchased under government tender. The program is intended to benefit South African industry by generating new or additional business.

In August 2004, the Minister of Finance issued the Code of Good Practice for BEE in Public Private Partnerships (PPPs) that had been released as a draft document in December 2003. The Code of Good Practice sets out the targets for BEE to be achieved in PPPs and provides clarity to bidding private parties. South Africa is not a signatory to the WTO Agreement on Government Procurement.

#### EXPORT SUBSIDIES

Under the Duty Credit Certificate Scheme, the government of South Africa offers duty credit certificates to South African exporters of textiles and clothing. Other incentives are available for the promotion of manufactured exports. SACU also has several duty drawback regimes for agricultural and nonagricultural products.

In September 1995 the South African government established the Motor Industry Development Program (MIDP) in order to assist the South African auto industry. This program includes measures to promote exports and introduces a phased reduction in import tariffs. The MIDP allows vehicle assemblers and component manufacturers to offset vehicle and component exports against similar imports. The ability to rebate import duties by exporting allows importers to bring in vehicles at lower effective rates of duty. It also enables assemblers to use import credits to source components at close-to international prices. In late 2002, the government extended the program from 2007 to 2012.

#### INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

##### Legal Regime

Property rights, including intellectual property rights, are protected under a variety of laws and regulations. The South African parliament passed two IPR-related laws at the end of 1997 -- the Counterfeit Goods Act and the Intellectual Property Laws Amendment Acts -- in order to enhance IPR protection. The Department of Trade and Industry (DTI) administers these acts. Although South Africa's intellectual property laws and practices are generally in conformity with those of the industrialized nations, there are deficiencies in enforcement and in guaranteeing the protections afforded under these laws. The U.S.-SACU free trade agreement negotiations will seek to address some of the shortcomings in South Africa's IPR protection regime.

The U.S. software industry has cited three principal deficiencies in the 1978 Copyright Act:

- Lack of criminal penalties for end user piracy. South African law currently provides that the sale of infringing software is a criminal offence, but there is no criminal penalty for end users.

- Lack of presumptions relating to copyright subsistence and ownership. Amending the law to add subsistence presumptions would reduce the procedural burden on rights holders in proving their cases.

- Non-deterrent civil damages. Amending the law to introduce statutory damages to cover end users and to ensure that compensatory damages serve as a deterrent would improve IPR protection. The current statutory provisions on damages are not considered to be sufficient to serve as a deterrent.

Until these changes are made in the law, the enforcement of individual copyright claims is complicated by the lack of evidentiary presumptions in the law, requiring use of an expensive registration system or submission of extensive proof of copyright subsistence and ownership. Amendments have been considered for years, but relatively little has been done in this area.

In 2001, South Africa introduced measures to enhance enforcement of the Counterfeit Goods Act. The South African government appointed more inspectors, designated more warehouses for counterfeit goods, destroyed counterfeit goods, and improved the training of customs, border police, and police officials. In 2004, there were 100 convictions for people arrested with counterfeit DVDs and computer games compared to 14 in 2003. Despite these efforts, the International Intellectual Property Alliance estimates total losses from copyright piracy in South Africa in 2002 at over \$84 million, including \$39 million in business software applications and \$30 million in motion pictures. Although law enforcement authorities often cooperate with the private sector in investigating allegations of counterfeit trade, there are concerns about laxity in enforcement of IPR laws against imports of pirated goods. Complainants can take both civil and criminal action against offenders.

U.S. firms have complained that South Africa does not adequately protect the safety and efficacy studies (also called "registration data") filed before national authorities for approval of agrochemical products. These data are unfairly "referenced" by competitors in order to register their products.

South Africa is a member of the Paris Union and acceded to the Stockholm Text of the Paris Convention for the Protection of Intellectual Property. South Africa is also a

member of the World Intellectual Property Organization (WIPO) but has yet to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.  
Software/Audio Visual IPR Issues

Software piracy still occurs frequently in South Africa. Between February and March 2001, the Business Software Alliance (BSA) gave South African organizations a one-time opportunity to legalize their software by registering. The campaign received 608 registrations to legalize pirated or illegally installed software, representing over 60,000 desktop personal computers. An independent research firm, International Planning and Research Corporation, conducted a survey for the BSA during 2001. It found that the local piracy rate dropped from 45 percent to 38 percent. Piracy in the video and sound industry also continues to be a concern. The Motion Picture Association estimated video piracy at 10 percent and optical disk piracy at 40 percent in 2003.

#### SERVICES BARRIERS

##### Telecommunications

South Africa has made a series of WTO commitments on value-added telecommunications and basic telecommunications services and has adopted the WTO reference paper on pro-competitive regulatory principles. The South African government also committed to license a second supplier no later than January 1, 2004, to compete against the current monopoly supplier, Telkom, in long-distance, data, telex, fax, and private leased circuits services. Despite the end of Telkom's exclusivity period in May 2002, Telkom has been able to continue its monopoly because of the government's unsuccessful attempts to license a second network operator (SNO).

Although the Minister of Communications conditionally approved a license for the SNO in December 2003, 19 percent empowerment shareholder Nexus Connexion sued the Minister over the inclusion of equity partners who were previously considered unqualified by the regulator. Nexus called for a review of the Minister's actions and asked the Court to prevent her from implementing her decision to license the SNO. Consequently, the Minister restructured the 51 percent strategic equity portion of the SNO (SepCo) and is in the process of awarding the controlling stake in SepCo to a third equity partner. Thirty percent of the SNO is held by the telecommunications divisions of Eskom (the state energy utility) and Transnet (the transport parastatal). Twenty five percent is held by equity partners Two Consortium and CommuniTel with the remaining 26 percent soon to be awarded.

In September 2004, the Minister of Communications announced a sweeping liberalization of the telecom sector, effective February 1, 2005. Among other things, the Minister indicated that mobile operators would be allowed to use any fixed lines for the provision of their service, value-added network services (VANS) could be provided by facilities other than those owned by Telkom and the Second National Operator, VANS providers would be allowed to carry voice using any protocol, and private telecommunications network operators could resell their spare capacity. The Independent Communications Authority of South Africa (ICASA) is developing regulations to take into account the Minister's announcement. The new regulations are expected to resolve past complaints by Internet Service Providers (ISPs) and value-added network services (VANS), which have previously cited problems in acquiring new facilities from Telkom.

The Department of Communications (DOC) released a Draft Convergence Bill in December 2003, which industry analysts hoped would simplify the existing legislative framework, empower the regulator, and open the telecoms industry to greater competition. Following a highly critical public comment period, the DOC undertook to revise the Bill. It is expected to be released in early 2005.

Telecommunications is one of the areas being addressed in the U.S.-SACU free trade agreement negotiations. South Africa's telecommunications regulatory authority, ICASA, has sole authority to determine whether these services are illegal. In the past, service providers have complained about ICASA ineffectiveness in asserting its authority over Telkom and have pursued remedies in the Pretoria High Court. Telkom also often challenges decisions taken by ICASA, leading to delays in implementing rulings. The Amended Telecommunications Act of 2001 allows only Telkom and the SNO to provide voice over Internet protocol (VOIP) services, and it appears to expand the definition of a public switched telecommunications service (PSTS) to include the provision, repair, and maintenance of any other telecommunications apparatus. Interested parties continue to raise questions concerning the consistency of these and

other provisions of the Amended Telecommunications Act with South Africa's WTO obligations. The United States continues to monitor South Africa pursuant to section 1377 of the Trade Act of 1988 for compliance with its WTO commitments.

#### Other Services

The United States has in the past shown interest in reaching an open skies air transport agreement with South Africa. During negotiations in May 2001, however, South Africa indicated that it would not agree to open skies, preferring instead incremental liberalization of the existing air transport agreement. Open skies agreements provide for open route rights, capacity, frequencies, designations, and pricing, as well as opportunities for cooperative marketing arrangements, including code-sharing and airline alliances. South African Airways (SAA), the national airline wholly-owned by the transport parastatal Transnet, had previously noted concerns about U.S. airlines exercising fifth-freedom rights in Africa and thereby impinging on one of SAA's strategic markets.

#### ANTICOMPETITIVE PRACTICES

##### Ownership Patterns

There is an historical legacy of concentrated ownership in some sectors of the South African economy. During the apartheid years, a large portion of the South African population was entirely excluded from ownership of business enterprises. Moreover, government policies from 1961 to 1994 prohibited some successful companies such as South African Breweries, Anglo American (including DeBeers) and SASOL from investing abroad. They therefore expanded their activities locally. As a result, conglomerates with considerable market power developed in the South African marketplace. This situation has been changing, as many of the major players have been expanding internationally and have listed on foreign stock exchanges. Together with the more effective competition authority and strong sectoral initiatives to enlarge the share of black participation in the economy, South Africa's business environment is becoming more competitive and more open to new entrants (including U.S. companies). Sectors such as energy, transport and telecommunications have also historically been controlled or dominated by parastatals. These sectors are gradually restructuring and opening up for competition from the private sector. The privatization program of the South African government, although moving slowly, is also starting to bring a change in ownership patterns.

#### ELECTRONIC COMMERCE

Effective July 31, 2002, all companies that conduct business in South Africa via electronic commerce must comply with the new Electronic Communications and Transactions Law. The new law was designed to facilitate electronic commerce but may increase regulatory burdens and introduce uncertainty into the future of electronic commerce in the country. The law requires government accreditation for certain electronic signatures, takes government control of the ".za" domain name, and requires a long list of disclosures for web sites that sell via the Internet.

#### OTHER BARRIERS

##### Transparency, Corruption and Crime

South African law provides for prosecution of government officials who solicit or accept bribes. Penalties for offering or accepting a bribe may include criminal prosecution, monetary fines, and dismissal for government employees, or deportation for foreign citizens. South Africa boasts no fewer than ten agencies engaged in anti-corruption activities. Some, like the Public Service Commission (PSC), Office of the Public Protector (OPP), and Office of the Auditor-General (OAG), are constitutionally mandated and address corruption as only part of their responsibilities. Others, like the South African Police Anti-Corruption Unit and the Directorate for Special Operations (more popularly known as "the Scorpions"), are dedicated to combating crime and corruption. High rates of violent crime, however, are a strain on capacity and make it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts. During the last few years, crime has been a far more serious problem than either corruption or political violence and an impediment to, and a cost of, doing business in South Africa. The South African police forces have not been effective or well accepted in many communities because of their historical role in enforcing minority rule, their lack of training, and internal crime and corruption within the forces. The levels of crime,



especially violent crime, are a deterrent to attracting U.S. companies to South Africa.

New laws, such as the Promotion of Access to Information Act signed into law in February 2000, have helped to increase transparency in government in the last few years. The Public Finance Management Act, which became effective on April 1, 2000, helped to raise the level of oversight and control over public funds and improved the transparency of government spending, especially with regard to off-budget agencies and parastatals. Notwithstanding these efforts, businesses complain about the lack of certainty and consistency in interpreting and implementing some government policies.

President Mbeki signed "The South African Prevention and Combating of Corrupt Activities Act" (PCCAA) into law on April 28, 2004. The PCCAA makes it more clear which activities are considered graft. The act:

? Includes a list of codified corruption offenses related to specific persons.

? Clearly defines that graft occurs between a "corruptor" and a "corruptee."

? Declares that a bribe need not be monetary in nature, nor need it be paid directly to the person who will be undertaking the corrupt act.

? Bars the payment of bribes to foreign public officials by South African citizens and firms.

? Provides a list of corruption-related offenses relating to specific matters in the public and private sectors.

? Allows for the investigation and seizure of "unexplained wealth."

? Tasks the National Treasury to establish a register of tender defaulters for corrupt individuals and firms.

? Obliges public officials to report any corrupt activities.

? Prescribes strict penalties, including the possibility of life imprisonment.

One shortcoming of the act is the failure to protect whistleblowers against recrimination or defamation claims.

#### Immigration Laws

For a number of years, U.S. and other foreign companies have complained that South African immigration legislation and the application of the law made it extremely difficult to get work permits for their foreign employees. Previously, South Africa relied on the apartheid-era Aliens Control Act, which did not take into account international developments and the opening up of the South African market. A new immigration law entered into force on May 31, 2002. The legislation establishes yearly quotas for granting work permits to foreigners. Local businesses have criticized the new law for creating uncertainty because the quota system sets limits on the number of skilled people in particular categories that may enter the country, and because corporate permits allow investors to make blanket applications for the people they need. It is not clear whether these corporate permits fall in or out of the quota system. The Trade and Industry Minister has suggested that the South African government may need to revise the law to acquire critically needed skills in South Africa. Home Affairs officials oppose moving away from quotas because it might mean reverting to the Aliens Control Act, wherein an employer had to establish the clear need for a skill. The Minister of Home Affairs has said that the new law is an enormous improvement over the previous legislation and places South Africa on a par with other countries, especially with respect to investors and intra-company transfer permits.

Southern African Customs Union

South Africa has been a member of the Southern African Customs Union (SACU) since its inception in 1910. The SACU Agreement was renegotiated in 1969 following the independence of Botswana, Swaziland and Lesotho. Namibia joined SACU in 1990. SACU aims to promote free trade and cooperation on customs matters among its five member states. There are currently no internal tariff barriers between SACU members but because of different tax regimes, there are some tax adjustments that occur at the borders. All SACU members except Botswana share a common currency as members of the Common Monetary Area. Imports from outside SACU are subject to a common external tariff. The SACU

governments signed a new agreement in October 2002 setting out the responsibilities of the Council of Ministers, the Customs Union Commission, and the Secretariat. SACU began negotiations on a free trade agreement with the United States in June 2003. SACU has also concluded a revised trade agreement with the SADC countries that would eliminate almost all duties on SACU-SADC trade.

Because of SACU, products from Botswana, Lesotho, Swaziland, and Namibia enter South Africa duty-free. In a few cases, products from these countries compete directly with U.S. goods that are subject to duties. For example, soda ash from Botswana comes into South Africa at a zero percent duty, whereas, soda ash from the U.S. faces a 5.5 percent duty. South Africa does not produce soda ash, but the duty on imported soda ash was introduced for the benefit of Botswana. Moreover, a legal complaint from Botswana's soda ash producer under South Africa's competition law threatens to block U.S. exports. The South African Competition Commission has pursued the claim as a "per se" offense, without making any judgment on the U.S. soda ash producer's impact on competition or consumers. If the South African Supreme Court does not grant an appeal so that the legal merits of the case can be argued, U.S. soda ash exports would be adversely affected. If the tariffs on U.S. soda ash were eliminated, U.S. exports of soda ash to South Africa could increase from less than \$8 million to \$25 million, closer to its historical level.

END TEXT

FRAZER